

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**HOWARD EUGENE BURNS,**

**Plaintiff,**

**v.**

**Civil Action No. 2:07cv76**

**MARK WILLIAMSON, Warden,**

**Defendant.**

**ORDER**

It will be recalled that on October 24, 2007, Magistrate Judge John S. Kaull filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed. Accordingly, the Court will proceed with consideration of the Report and Recommendation reviewing for clear error.<sup>1</sup>

Upon examination of the report from the Magistrate Judge, it appears to the Court that the Plaintiff has not sufficiently set forth any claims for relief. It appearing that the Plaintiff may have intended to raise claims pursuant to 42 U.S.C. §1983, Plaintiff was sent a copy of the blank §1983 civil rights complaint form utilized by this Court; however, Plaintiff filed a response asserting that, while he intends to pursue his claims further, he could not do so at that time. Accordingly, the Magistrate Judge recommends that, rather than subjecting Plaintiff to the filing fee, the case should be dismissed without prejudice and without assessing Plaintiff the filing fee so that, when Plaintiff is ready and able to properly file a complaint, he may still do so without penalty. Upon review, the Court finds that this matter

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<sup>1</sup>The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4<sup>th</sup> Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

was properly considered by Magistrate Judge Kaull in his Report and Recommendation. Moreover, the Court, upon a review for clear error of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

**ORDERED** that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the above-styled civil action shall be, and the same is hereby, **DISMISSED without prejudice** and **without assessing Plaintiff the filing fee**. It is further

**ORDERED** that the above-styled civil action shall be **STRICKEN** from the docket of this Court. It is further

**ORDERED** that the Clerk shall enter judgment for the Defendant. It is further **ORDERED** that, if Plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein.

**ENTER:** April 13, 2009

**/s/ Robert E. Maxwell**  
United States District Judge